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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,681	12/31/2003	Bryon Paul Day	KCX-1226 (19589)	2161
7590	11/14/2007		EXAMINER	
Mr. Stephen E. Bondura Dority & Manning, P.A. P.O. Box 1449 Greenville, SC 29602			MULLIS, JEFFREY C	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			11/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,681	<b>Applicant(s)</b> DAY ET AL.
	<b>Examiner</b> Jeffrey C. Mullis	<b>Art Unit</b> 1796

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 24 October 2007.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 33,37-40 and 42-53 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 33,37-40 and 42-53 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9-6-07  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_ .

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33, 37-40, 42-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan, cited above in view of Morman (US 4,965,122) or Gillies (US 6,648,869) or Datta (US 5,665,186) or Morman (US 4,965,122; the secondary reference relied upon for claims 47-49). Patentees disclose a composition for nonwoven bonding of disposable diapers (abstract) containing SBS and SIS triblock copolymers (column 3, lines 1-17) in which a first block copolymer has a MFR of less than 20 and a second one greater than 30 having applicants MFR in combination (column 3, line 47-column 4, line 30). Olefin oligomers may be added as plasticizers at column 5, line 34. Vaughan does not disclose nonwovens which are spun bonded or necked or corrugated and no examples exist of the specific combination of applicants claim 33 or specifically claim 42 and the amount of olefin oligomers is not disclosed

Gillies disclose a diaper containing layers bound to each other in which one layer is corrugated to more effectively provide a barrier to waste liquid (abstract; claims 15 and 16).

Datta discloses an absorbent article with a corrugated layer in order to better conform to the shape of the wearer (abstract).

It would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to provide a corrugated layer in the article of Vaughan in order to provide a better fit to the wearer or more effective absorption of liquids as taught by Datta and Gillies absent any showing of surprising or unexpected results.

With re to claim 42 it would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to arrive at applicants combination by selecting from the disclosures of Vaughan absent any showing of surprising or unexpected results.

Morman at column 1, lines 35-38 discloses use of necking to improve stretch and recovery characteristic. Hence it would have been obvious to a practitioner having an ordinary skill in the art to neck the material of the primary reference in order to improve stretch and recovery as taught by Morman absent any showing of surprising or unexpected results.

To use applicants amounts of polyolefin in the primary reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in that it requires only routine experimentation to find the optimum or workable range of a result effective variable absent any showing of surprising or unexpected results

Claims 33, 37-40, 43, 44-46 and 50-53 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maris (US 2003/0125442).

Patentees disclose a composition having a block copolymer "a1" having a MFR of less than 20 and a second styrenic block copolymer "a2" (paragraphs 18 and 19). Note Table 1 containing compositions 2, 3 and 6 in paragraph 61 for use of combinations of STYROFLEX BX 6105 and KRATON G 1652 which is disclosed in paragraph 47 as "high" and "low" molecular weight styrenic triblock copolymers and as the MFR of Maris' "a1" encompasses applicants lowest flow rate material it would reasonably appear that the low molecular weight material of Maris would have an MFR higher than 20 and thus meet the limitation of the claims. Note the abstract for use as a layer. Note paragraphs 27, 29 and 47 for use of polyolefin.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Claims 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maris, cited above.

Maris does not disclose examples of the specific combination of applicants claim 42..

With re to claim 42 it would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to arrive at applicants combination by selecting from the disclosures of Maris absent any showing of surprising or unexpected results.

Claims 33, 37-40, 43-46 and 50-53 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Diehl (US 5,358,783).

Examples 1 and 4 of the patent disclose a composition having a combination of SIS with 40 MFR and another SIS with MFR such that MFR of the other SIS is lowered upon addition and therefore reasonably appears to have a MFR much lower than the first SIS and therefore in applicants range. Note claim 11 for use as a layer. Columns 5 and 6 disclose use of polyolefins as plasticizers and tackifiers.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis

exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Applicant's arguments filed 10-24-07 have been fully considered but they are not persuasive. Vaughan discloses the use of two block copolymers and yet discloses that only one block copolymer may have a melt flow rate of less than about 20 (column 3, lines 62-65) and as such implies that one of the block copolymers may have a melt flow rate of greater than 20. Column 4, lines 19-27 indicates that use of SBS with MFR of greater than 20 would not be preferred, but nonetheless patentees disclosure that only one block copolymer need to have MFR of less than 20 implies that a block copolymer of greater than 20 is workable in Vaughans' invention. Patentees disclose that use of high styrene content block copolymers leads to high heat stability and is therefore desirable from the viewpoint of increasing heat stability and even discloses that styrene contents of as high as 45% can be used (column 3, lines23-25) such as are disclosed at column 4, lines 20-25 as having MFR's of 30 or greater. Weather or not applicants agree with this, again patentees disclose that only one block copolymer need have a MFR of less than about 20 and does not disclose that the less than 20 MFR block copolymer needs to be the first block copolymer. Admittedly it is necessary to select from a less preferred disclosure of the patent but it is not the position of the examiner that the reference anticipates the claims and in any case higher heat stability would be assumed for such embodiments by those skilled in the art. With re to Maris and applicants product literature, the tempuature and load of measurement is not stated except for Kraton G1652 which is measured at 230 degrees and would have a lower

melt flow at lower temperatures. With re to applicants characteristics, these are assumed to e inherent in the references given the fact that the references contain similar or identical matereials. No dat comparative to the references has been presented which would prove unexpected results or that any characteristics recite d by the claims are not prenent in the references.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

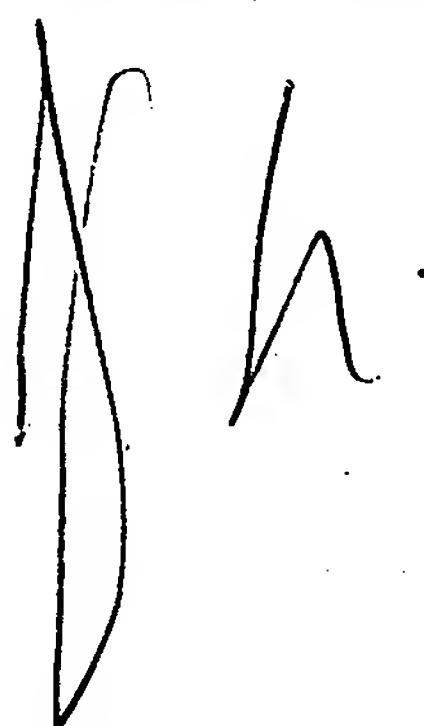
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Art Unit: 1796

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Jeffrey C. Mullis  
Primary Examiner  
Art Unit 1796

JCM

11-7-07

A handwritten signature in black ink, appearing to read "Jeffrey C. Mullis". The signature is fluid and cursive, with a large, stylized 'J' at the beginning.